

## THIRD DIVISION

[ G.R. No. 166869, February 16, 2010 ]

**PHILIPPINE HAWK CORPORATION, PETITIONER, VS. VIVIAN TAN LEE, RESPONDENT.**

### DECISION

**PERALTA, J.:**

This is a Petition for Review on *Certiorari*<sup>[1]</sup> of the Decision of the Court of Appeals in CA-G.R. CV No. 70860, promulgated on August 17, 2004, affirming with modification the Decision of the Regional Trial Court (RTC) of Quezon City, Branch 102, dated March 16, 2001, in Civil Case No. Q-91-9191, ordering petitioner Philippine Hawk Corporation and Margarito Avila to jointly and severally pay respondent Vivian Tan Lee damages as a result of a vehicular accident.

The facts are as follows:

On March 15, 2005, respondent Vivian Tan Lee filed before the RTC of Quezon City a Complaint<sup>[2]</sup> against petitioner Philippine Hawk Corporation and defendant Margarito Avila for damages based on *quasi-delict*, arising from a vehicular accident that occurred on March 17, 1991 in Barangay Buensoceso, Gumaca, Quezon. The accident resulted in the death of respondent's husband, Silvino Tan, and caused respondent physical injuries.

On June 18, 1992, respondent filed an Amended Complaint,<sup>[3]</sup> in her own behalf and in behalf of her children, in the civil case for damages against petitioner. Respondent sought the payment of indemnity for the death of Silvino Tan, moral and exemplary damages, funeral and interment expenses, medical and hospitalization expenses, the cost of the motorcycle's repair, attorney's fees, and other just and equitable reliefs.

The accident involved a motorcycle, a passenger jeep, and a bus with Body No. 119. The bus was owned by petitioner Philippine Hawk Corporation, and was then being driven by Margarito Avila.

In its Answer,<sup>[4]</sup> petitioner denied liability for the vehicular accident, alleging that the immediate and proximate cause of the accident was the recklessness or lack of caution of Silvino Tan. Petitioner asserted that it exercised the diligence of a good father of the family in the selection and supervision of its employees, including Margarito Avila.

On March 25, 1993, the trial court issued a Pre-trial Order<sup>[5]</sup> stating that the parties manifested that there was no possibility of amicable settlement between them.

However, they agreed to stipulate on the following facts:

1. On March 17, 1991, in Bgy. Buensoceso, Gumaca, Quezon, plaintiff Vivian Lee Tan and her husband Silvino Tan, while on board a motorcycle with [P]late No. DA-5480 driven by the latter, and a Metro Bus with [P]late No. NXR-262 driven by Margarito Avila, were involved in an accident;
2. As a result of the accident, Silvino Tan died on the spot while plaintiff Vivian Lee Tan suffered physical injuries which necessitated medical attention and hospitalization;
3. The deceased Silvino Tan is survived by his wife, plaintiff Vivian Lee Tan and four children, three of whom are now residents of the United States; and
4. Defendant Margarito Avila is an employee of defendant Philippine Hawk.<sup>[6]</sup>

The parties also agreed on the following issues:

1. Whether or not the proximate cause of the accident causing physical injuries upon the plaintiff Vivian Lee Tan and resulting in the death of the latter's husband was the recklessness and negligence of Margarito Avila or the deceased Silvino Tan; and
2. Whether or not defendant Philippine Hawk Transport Corporation exercised the diligence of a good father of the family in the selection and supervision of its driver Margarito Avila.<sup>[7]</sup>

Respondent testified that on March 17, 1991, she was riding on their motorcycle in tandem with her husband, who was on the wheel, at a place after a Caltex gasoline station in Barangay Buensoceso, Gumaca, Quezon on the way to Lopez, Quezon. They came from the Pasumbal Machine Shop, where they inquired about the repair of their tanker. They were on a stop position at the side of the highway; and when they were about to make a turn, she saw a bus running at fast speed coming toward them, and then the bus hit a jeep parked on the roadside, and their motorcycle as well. She lost consciousness and was brought to the hospital in Gumaca, Quezon, where she was confined for a week. She was later transferred to St. Luke's Hospital in Quezon City, Manila. She suffered a fracture on her left chest, her left arm became swollen, she felt pain in her bones, and had high blood pressure.<sup>[8]</sup>

Respondent's husband died due to the vehicular accident. The immediate cause of his death was massive cerebral hemorrhage.<sup>[9]</sup>

Respondent further testified that her husband was leasing<sup>[10]</sup> and operating a Caltex gasoline station in Gumaca, Quezon that yielded one million pesos a year in revenue. They also had a copra business, which gave them an income of P3,000.00

a month or P36,000.00 a year.<sup>[11]</sup>

Ernest Ovia, the driver of the passenger jeep involved in the accident, testified that in the afternoon of March 17, 1991, his jeep was parked on the left side of the highway near the Pasumbal Machine Shop. He did not notice the motorcycle before the accident. But he saw the bus dragging the motorcycle along the highway, and then the bus bumped his jeep and sped away.<sup>[12]</sup>

For the defense, Margarito Avila, the driver of petitioner's bus, testified that on March 17, 1999, at about 4:30 p.m., he was driving his bus at 60 kilometers per hour on the Maharlika Highway. When they were at Barangay Buensoceso, Gumaca, Quezon, a motorcycle ran from his left side of the highway, and as the bus came near, the motorcycle crossed the path of the bus, and so he turned the bus to the right. He heard a loud banging sound. From his side mirror, he saw that the motorcycle turned turtle ("*bumaliktad*"). He did not stop to help out of fear for his life, but drove on and surrendered to the police. He denied that he bumped the motorcycle.<sup>[13]</sup>

Avila further testified that he had previously been involved in sideswiping incidents, but he forgot how many times.<sup>[14]</sup>

Rodolfo Ilagan, the bus conductor, testified that the motorcycle bumped the left side of the bus that was running at 40 kilometers per hour.<sup>[15]</sup>

Domingo S. Sisperes, operations officer of petitioner, testified that, like their other drivers, Avila was subjected to and passed the following requirements:

- (1) Submission of NBI clearance;
- (2) Certification from his previous employer that he had no bad record;
- (3) Physical examination to determine his fitness to drive;
- (4) Test of his driving ability, particularly his defensive skill; and
- (5) Review of his driving skill every six months.<sup>[16]</sup>

Efren Delantar, a *Barangay Kagawad* in Buensoceso, Gumaca, Quezon, testified that the bus was running on the highway on a straight path when a motorcycle, with a woman behind its driver, suddenly emerged from the left side of the road from a machine shop. The motorcycle crossed the highway in a zigzag manner and bumped the side of the bus.<sup>[17]</sup>

In its Decision dated March 16, 2001, the trial court rendered judgment against petitioner and defendant Margarito Avila, the dispositive portion of which reads:

ACCORDINGLY, MARGARITO AVILA is adjudged guilty of simple negligence, and judgment is hereby rendered in favor of the plaintiff Vivian Lee Tan and h[er] husband's heirs ordering the defendants Philippine Hawk Corporation and Margarito Avila to pay them jointly and solidarily the sum of P745,575.00 representing loss of earnings and actual damages plus P50,000.00 as moral damages.<sup>[18]</sup>

The trial court found that before the collision, the motorcycle was on the left side of the road, just as the passenger jeep was. Prior to the accident, the motorcycle was in a running position moving toward the right side of the highway. The trial court agreed with the bus driver that the motorcycle was moving ahead of the bus from the left side of the road toward the right side of the road, but disagreed that the motorcycle crossed the path of the bus while the bus was running on the right side of the road.<sup>[19]</sup>

The trial court held that if the bus were on the right side of the highway, and Margarito Avila turned his bus to the right in an attempt to avoid hitting the motorcycle, then the bus would not have hit the passenger jeep, which was then parked on the left side of the road. The fact that the bus also hit the passenger jeep showed that the bus must have been running from the right lane to the left lane of the highway, which caused the collision with the motorcycle and the passenger jeep parked on the left side of the road. The trial court stated that since Avila saw the motorcycle before the collision, he should have stepped on the brakes and slowed down, but he just maintained his speed and veered to the left.<sup>[20]</sup> The trial court found Margarito Avila guilty of simple negligence.

The trial court held petitioner bus company liable for failing to exercise the diligence of a good father of the family in the selection and supervision of Avila, having failed to sufficiently inculcate in him discipline and correct behavior on the road.<sup>[21]</sup>

On appeal, the Court of Appeals affirmed the decision of the trial court with modification in the award of damages. The dispositive portion of the decision reads:

WHEREFORE, foregoing premises considered, the appeal is DENIED. The assailed decision dated March 16, 2001 is hereby AFFIRMED with MODIFICATION. Appellants Philippine Hawk and Avila are hereby ordered to pay jointly and severally appellee the following amount: (a) P168,019.55 as actual damages; (b) P10,000.00 as temperate damages; (c) P100,000.00 as moral damages; (d) P590,000.00 as unearned income; and (e) P50,000.00 as civil indemnity.<sup>[22]</sup>

Petitioner filed this petition, raising the following issues:

- 1) The Court of Appeals committed grave abuse of discretion amounting to lack of jurisdiction in passing upon an issue, which had not been raised on appeal, and which had, therefore, attained finality, in total disregard of the doctrine laid down by this Court in *Abubakar v. Abubakar*, G.R. No. 134622, October 22, 1999.
- 2) The Court of Appeals committed reversible error in its finding that the petitioner's bus driver saw the motorcycle of private respondent executing a U-turn on the highway "about fifteen (15) meters away" and thereafter held that the Doctrine of Last Clear was applicable to the instant case. This was a

palpable error for the simple reason that the aforesaid distance was the distance of the witness to the bus and not the distance of the bus to the respondent's motorcycle, as clearly borne out by the records.

- 3) The Court of Appeals committed reversible error in awarding damages in total disregard of the established doctrine laid down in *Danao v. Court of Appeals*, 154 SCRA 447 and *Viron Transportation Co., Inc. v. Delos Santos*, G.R. No. 138296, November 22, 2000.<sup>[23]</sup>

In short, the issues raised by petitioner are: (1) whether or not negligence may be attributed to petitioner's driver, and whether negligence on his part was the proximate cause of the accident, resulting in the death of Silvino Tan and causing physical injuries to respondent; (2) whether or not petitioner is liable to respondent for damages; and (3) whether or not the damages awarded by respondent Court of Appeals are proper.

Petitioner seeks a review of the factual findings of the trial court, which were sustained by the Court of Appeals, that petitioner's driver was negligent in driving the bus, which caused physical injuries to respondent and the death of respondent's husband.

The rule is settled that the findings of the trial court, especially when affirmed by the Court of Appeals, are conclusive on this Court when supported by the evidence on record.<sup>[24]</sup> The Court has carefully reviewed the records of this case, and found no cogent reason to disturb the findings of the trial court, thus:

The Court agree[s] with the bus driver Margarito that the motorcycle was moving ahead of the bus towards the right side from the left side of the road, but disagrees with him that it crossed the path of the bus while the bus was running on the right side of the highway.

If the bus were on the right side of the highway and Margarito turned his bus to the right in an attempt to avoid hitting it, then the bus would not have hit the passenger jeep vehicle which was then parked on the left side of the road. The fact that the bus hit the jeep too, shows that the bus must have been running to the left lane of the highway from right to the left, that the collision between it and the parked jeep and the moving rightways cycle became inevitable. Besides, Margarito said he saw the motorcycle before the collision ahead of the bus; that being so, an extra-cautious public utility driver should have stepped on his brakes and slowed down. Here, the bus never slowed down, it simply maintained its highway speed and veered to the left. This is negligence indeed.<sup>[25]</sup>

Petitioner contends that the Court of Appeals was mistaken in stating that the bus driver saw respondent's motorcycle "about 15 meters away" before the collision, because the said distance, as testified to by its witness Efren Delantar Ong, was Ong's distance from the bus, and not the distance of the bus from the motorcycle.